

Children's Ombudsman

ANNUAL REPORT 1998-1999

OFFICE OF CHILDREN'S OMBUDSMAN

John Engler, Governor
State of Michigan

Ombudsman offices in government, business, and academia have provided a safe environment for people to have their grievances taken seriously and investigated impartially. Recommendations from the ombudsman's office provide a means for a system to correct itself — either in altering a decision about a particular case or establishing new laws, procedures, or regulations regarding a specific problem. The existence of ombudsman offices acknowledges that it is an imperfect world, but that by recognizing and addressing the imperfections, we can strive toward improvements.¹

¹ Howard A. Davidson, Cynthia Price Cohen, and Linda K. Girdner, *Establishing Ombudsman Programs for Children and Youth* (Washington, D.C.: American Bar Association Center on Children and the Law, 1993), 18.

OFFICE OF THE CHILDREN'S OMBUDSMAN

Annual Report 1998 - 1999

Established by Public Act 204 of 1994, MCLA 722.921, *et seq*, the Office of Children's Ombudsman (OCO) serves, "as a means of monitoring and ensuring [the Family Independence Agency (FIA) and private child placing agencies'] compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes." The Ombudsman serves as an autonomous entity appointed by Governor John Engler to investigate complaints about children being served by Michigan's child welfare system (namely, the FIA and private child placing agencies) and, in turn, to make recommendations to the Governor, the FIA Director, and the Legislature for change in child welfare laws, rules and policies.

Mission Statement

The mission of the Office of the Children's Ombudsman is to assure the safety and well-being of Michigan's children in need of foster care, adoption, and protective services and to promote public confidence in the child welfare system. This will be accomplished through independently investigating complaints, advocating for children, and recommending changes to improve law, policy, and practice for the benefit of current and future generations.

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JOHN ENGLER, Governor

OFFICE OF CHILDREN'S OMBUDSMAN

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May, 2000

The Honorable John Engler, Governor
Mr. Douglas E. Howard, Director, Family Independence Agency
Honorable Members of the Michigan Legislature

I am pleased to submit the 1998-1999 Annual Report of the Children's Ombudsman pursuant to Public Act 204 of 1994, "The Children's Ombudsman Act." Specifically, section 10(5) states, *"The Ombudsman shall submit to the Governor, the Director of the Department, and the Legislature an annual report on the conduct of the Ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies."*

This report provides specific recommendations for change developed through case investigation as well as an accounting of the Ombudsman's duties and conduct from July 1, 1998 to September 30, 1999. The report further marks several progressive changes within the inner workings of the Ombudsman's office. While our commitment to improving the lives of children has not altered, we have updated and refined many aspects of our daily practice in an effort to strengthen our positive impact on the child welfare system.

In finishing my first year as Children's Ombudsman, I thank you for the opportunity to work with the OCO staff to improve programs committed to assisting Michigan's children.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Karen R. Quinn".

Karen R. Quinn, J.D.
Children's Ombudsman

Executive Summary

This serves as the fourth Annual Report issued by the Office of Children's Ombudsman. Established by Public Act (PA) 204 of 1994, MCL 722.921, *et seq*, the Office of Children's Ombudsman serves, "as a means of monitoring and ensuring [FIA and private child placing agencies'] compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes." The Ombudsman and her staff serve as an autonomous entity mandated to investigate complaints about children being served by Michigan's child welfare system (namely, the Family Independence Agency (FIA) and private child placing agencies). In turn, they render recommendations to the Governor, the FIA Director and the Legislature for change in child welfare laws, rules and policies.

This Annual Report discusses the work performed by the OCO during the fifteen-month period between July 1, 1998 and September 30, 1999. The primary role of the OCO continues to be the investigation and resolution of complaints issued against state and private agencies regarding children in the protective services, foster care, and/or adoption services systems.

Mission Statement: During the reporting period, the OCO developed a Mission Statement in order to refocus their efforts as a team under new leadership: *"The mission of the Office of the Children's Ombudsman is to assure the safety and well-being of Michigan's children in need of foster care, adoption, and protective services and to promote public confidence in the child welfare system. This will be accomplished through independently investigating complaints, advocating for children, and recommending changes to improve law, policy, and practice for the benefit of current and future generations."*

Organization of the Report: This report is organized into four parts: (1) Conduct and Operations; (2) Investigative Process; (3) Recommendations; and, (4) Appendices.

Conduct and Operations: This section reports on the work undertaken by the OCO covering the fifteen-month period between July 1, 1998 and September 30, 1999.² A thorough description of the OCO Investigative Team is provided, as is a discussion of technological enhancements within the office. Also of interest is a description of the OCO's ongoing relationship with the FIA and ways in which both entities continue to forge a mutually beneficial relationship in order to serve Michigan's children. Statistical information of interest in this section includes:

- The fiscal year (FY) 1998-1999 appropriation for the OCO was \$1,157,100.
- Including the Ombudsman, 11 professionals comprise the Investigative Team.
- Team members have an average of 22 years of professional experience.
- Team members participated in a total of 27 external training sessions.

² The OCO extended the reporting period for this report in order to coincide with the State of Michigan's fiscal year. Future reports will return to a twelve-month cycle, beginning October 1, 1999.

- FIA provided the OCO with 9 internal training sessions on department-specific issues.
- Team members participated in/on 13 boards, task forces and committees related to child welfare issues.

Investigative Process: This section explains the investigative process commencing with a description of the intake process from receipt of a complaint through closure of an investigation. Additionally, a description of the Report of Findings and Recommendations (F&Rs) submitted during the reporting period is provided. Readers will note that the complaint intake process has been refined in order to more clearly meet the statutory guidelines provided by PA 204 of 1994, and thus better serve children within the protective services, foster care, and adoption services systems.

During the reporting period, the OCO received 698 complaints involving 1,490 children in 69 of Michigan's 83 counties. Of the 698 complaints received, 226 resulted in investigations. Additional statistical information found in this section includes:

- The children served by the OCO ranged in age from infancy through 18 years of age with an average age of 7.35 years.
- 54% of case investigations involved Children's Protective Services (CPS).
- 19% of case investigations involved Foster Care (FC).
- 4% of case investigations involved Adoption Services (AS).
- 23% involved a combination of CPS, FC and/or AS issues.
- 58% of all complaints were made by a family member.
- 86 F&Rs were submitted to the FIA and/or private agencies during the reporting period.
- 420 findings were issued within the 86 F&Rs submitted.
- 202 case investigations resulted in an affirmation of the FIA and/or private agencies' actions.³

Recommendations: This section contains 12 recommendations for legislative and policy changes within the child welfare system. Recommendations are derived from complaints submitted to the OCO and case investigations undertaken during the reporting period — July 1, 1998 to September 30, 1999. Topics include requests for clarification in FIA policy regarding protective services and foster care, suggestions for legislative amendments in several areas of child welfare and requests for technological enhancement of child welfare delivery systems. Specifically, starting on page 14, this section provides recommendations regarding:

- children whose parents' rights to previous offspring have been terminated;
- home study requirements pursuant to kinship care placements;
- consistent documentation in foster care medical passports;
- caseworker practice in reference to foster parents inclusion in case planning;
- caseworker/supervisor caseload sizes and staff's ability to meet current law/policy ;

³ The number of affirmations and F&Rs reflects cases that may have been open prior to the reporting period; however, a final report was not submitted until the 1998-1999 reporting period.

- enhancement of the Central Registry's current capabilities;
- legislation regarding "non-parent adults'" culpability in child abuse cases;
- legislation regarding FIA's communication with Family Court in child abuse cases;
- legislation regarding disclosure of Central Registry data to parents;
- legislation ensuring legal representation of FIA caseworkers in court;
- legislation addressing the Foster Care Review Board's ability to review MCI cases;
- legislation regarding a parent's responsibility for child abuse perpetrated by others.

Appendices: This section contains: an acknowledgments section; a report on the administrative response regarding specific recommendations from the 1997-1998 Annual Report; a detailed list of courses attended by the OCO staff during the reporting period; a breakdown of the frequency of case complaints issued by county; a breakdown of the frequency of investigations by county; a copy of PA 204 of 1994; and, a "Glossary of Acronyms" to assist the reader in identifying the numerous compound terms used throughout the child welfare system.

Conduct and Operations

Child abuse and neglect...not a topic people are generally comfortable acknowledging or discussing. Yet for too many of Michigan's children, abuse and neglect at the hands of their caregivers is a daily reality. The combination of laws, multi-faceted agencies and programs designed to protect children are often complex when it comes to implementation. In response to this intricate child welfare system, several states, including Michigan, have created and designated a Children's Ombudsman to investigate complaints about the system, hold the system more accountable, and make recommendations for needed change.

The word "Ombudsman" derives from a Scandinavian term indicating a person who acts on behalf of another. The American Bar Association has further defined an Ombudsman as, "an independent government official who receives complaints against the government (and government related agencies) and/or its officials from aggrieved persons, who investigates, and who, if the complaints are justified, makes recommendations to remedy the complaints." In effect, an Ombudsman serves as a "citizen defender" who accepts complaints about a governmental system and investigates in order to objectively facilitate solutions.

Ombudsman offices are increasing in number throughout the country, and two systems have emerged. For example, in some states, a single Ombudsman exists to process complaints of every type. In other states, separate Ombudsmen have been designated to address specific problem areas. Michigan falls within the latter category and has established Ombudsmen in the fields of Civil Service, Clean Air, Corrections, Education, Environmental Health, Long-Term Care, Mental Health, Michigan Business, and the City of Detroit. To this end, on June 20, 1994, Governor John Engler signed into law the Children's Ombudsman Act (Public Act 204 of 1994, MCL 722.921 *et seq*) in order to provide Michigan's child welfare system with an autonomous government agency. Specifically, the Office of Children's Ombudsman serves to investigate complaints about children in the children's protective services (abuse and neglect), foster care and adoption services systems. Recommendations to the Governor, FIA Director, and Legislature for changes in child welfare laws, rules and policies result from investigative findings.

On April 6, 1999, Governor Engler appointed Karen Quinn as the Michigan Children's Ombudsman. She had served as the Acting Ombudsman following the departure of Richard Bearup in November of 1998. Ms. Quinn's professional background includes four years as the human services policy coordinator for Governor Engler, and three years as the deputy legal counsel for Wisconsin Governor Tommy Thompson. Her educational background includes a Bachelor of Arts degree in Psychology and Business Administration from Luther College in Iowa, and a Juris Doctor degree from the University of Wisconsin Law School.

Budget

Pursuant to PA 204, Section 4(1), "*The ombudsman shall establish procedures for budgeting, expending funds, and employing personnel.*" During the fiscal year covered by this report, the OCO received \$1,157,100 in appropriated funds. Principal expenses continue to be for investigative staff,⁴ expenses related to site investigations, court appearances, case

⁴ At the outset of FY 1998-1999, 11 individuals comprised the OCO staff. Two more individuals were added toward the end of the reporting period raising the overall number to 13 staff members.

management and investigator training. The OCO also expended funds during the fiscal year to update the automated case management system, expand and improve the OCO website, and produce an informative brochure.

Technological Enhancements

In order to better facilitate thorough case investigations and capture statistical information, the OCO updated its automated case management system — a project programmed by Electronic Data Systems (EDS) and installed by the state of Michigan's Information Technology Services Division (ITSD). The database has now been enhanced to capture individual case information more effectively and better track trends related to CPS, foster care, and adoption cases as well as general child welfare issues. The system also provides enhanced reporting capabilities and allows for improved remote access to the Detroit satellite office.

In order to disseminate information about the functions of the OCO, the OCO website has also been improved. The website (located at <http://www.state.mi.us/dmb/ombudsman>) now provides the user with an in-depth description of such things as: the OCO functions and duties, staff composition, legislative history, enabling law, and a general history of the ombudsman concept. A "*Frequently Asked Questions*" section assists users in determining whether the OCO is the appropriate remedy for their individual situation. Additionally, a section providing information for foster parents and relative care providers has been added. Users may also access the OCO Annual Reports for reporting periods 1996-1997 and 1997-1998, as well as link up with related websites to Michigan-based and nationwide agencies specializing in child welfare issues.

An informative brochure has also been developed in an effort to promote awareness of the OCO's existence and educate the public about the general duties and responsibilities of the OCO. The brochure provides information on who may make a complaint, how to make a complaint, and provides a brief overview of the investigative process. The OCO encloses brochures in initial correspondence with complainants as well as distributes them at training functions and speaking engagements.

Multi-Disciplinary Investigative Team

From its inception, the OCO has continually built upon the establishment of a multi-disciplinary team of investigators. Through diverse educational, professional and practical experience, team members provide a well-rounded approach to each case. Investigators have an average of 22 years professional experience and three investigators are currently pursuing advanced degrees in the areas of social work, marriage and family therapy and law. Two new investigators joined the OCO Investigative Team during this reporting period: a licensed child psychologist and former State Senator as well as a former FIA Social Services Specialist, with experience in child foster home licensing and recruitment.

The Investigative Team consists of the following professionals:

- **Children's Ombudsman** - A former deputy legal counsel and human services policy coordinator, who served four years with Governor John Engler's office.
- **Chief Investigator** - A retired enlisted officer in the Michigan State Police (MSP) who

served over 25 years, including undercover investigative duties, 6 years as an internal affairs investigator, and various supervisory positions.

- **Senior Investigator** - A retired police investigator from the Detroit Police Department who served over 25 years, including 13 years as an investigator of criminal child maltreatment cases in the child abuse unit.
- **Intake Investigator** - A certified social worker with experience in foster care case management and foster home licensing, formerly with FIA and private agencies.
- **Investigator** - A former assistant prosecuting attorney for child sex abuse cases with experience as a law clerk and legal researcher.
- **Investigator** - A former CPS worker with Indian Child Welfare experience, as well as experience as a program manager and group social worker for emergency shelter homes and residential treatment facilities.
- **Investigator** - A former educator and counselor with experience in prevention services with a private social services agency.
- **Investigator** - A registered nurse with clinical experience in child abuse and neglect as well as working with children in community health, hospital, and school settings.
- **Investigator** - A retired officer from the Michigan State Police who served 37 years as a detective, the last 12 years of which were spent as a supervisor in the Investigative Services Division.
- **Investigator** - A licensed Ph.D. child psychologist and former state senator who served 26 years in the Michigan legislature.
- **Investigator** - A social services specialist with experience in children's foster home licensing and recruitment, formerly with the FIA.

Training and Community Outreach

In order to keep their skills current, the Ombudsman and team members continue to receive specialized training in all areas relating to child welfare, but focusing primarily on issues related to child abuse and neglect. During the reporting period, team members participated in over 25 training sessions both singularly and collectively. Additionally, the FIA provided 9 training sessions to team members in an effort to both fully explain and receive input about certain FIA functions and/or projects. A detailed list of all trainings attended during the reporting period may be found in Appendix C.

In addition to investigative duties and training opportunities, several team members serve on boards, task forces, and committees related to child welfare in an effort to exchange ideas, provide insight and generally take an active part in seeking ways to advocate for improvement in the lives of children. The following is a list of boards, task forces, and committees team members participated in during the reporting period:

- Chance at Childhood Institute
- Child Death Review — State Advisory Team
- Child Protection Citizen Review Panel
- Detroit Board of Education — Resource Coordinating Team

- FIA Reengineering Committee for Foster Home Development
- Infant Brain Development Task Force
- Michigan Foster and Adoptive Parent Association
- PAAM (Prosecuting Attorneys Association of Michigan) — Seminar Advisory Committee
- Putting It Together for Michigan Families — Executive Committee
- Ready to Learn Summit
- State Bar of Michigan — Adoption Law Subcommittee
- Substance Abuse Task Force
- The Children's Center — Central Screening Advisory Committee

Inter-Agency Collaboration

The OCO continues to collaborate with the FIA to better serve the children of Michigan. Since the OCO's inception, efforts have been made to work cooperatively with the FIA and set mutually acceptable standards whenever professional disagreements occur. To further promote this relationship, a Memorandum of Understanding (MOU) was signed with previous FIA Director Marva Livingston Hammons. The MOU represents an effort on the part of both agencies to agree upon a method by which each Agency will perform its respective statutory duties while maintaining professional respect for each other. The original MOU, signed by Ms. Hammons and Ms. Quinn on December 2, 1998, deals primarily with access to information, records and documents. On February 11, 1999, Governor Engler appointed Douglas E. Howard Director of the FIA. With Mr. Howard's appointment, the OCO has committed to refining and clarifying the relationship between the two entities in an effort to better facilitate communication, and thus case investigation. The MOU is currently under revision to better serve both agencies and further develop mutually beneficial policy regarding OCO complaint investigations.

In order to gain further knowledge about recent changes in FIA policy and procedure, OCO investigators participated in 9 FIA-sponsored training sessions including the following:

- Central Registry
- Community Collaboration Training
- Role of the Michigan Children's Institute (MCI)
- Safety and Risk Assessment System Training
- Sexual Abuse Training
- Five-Tier CPS Structured Decision-Making System
- Introduction to Child Welfare Issues
- Solution Focused Interviewing
- Children's Protective Services Training

Investigative Process

Pursuant to PA 204, Section 6(a), the Children's Ombudsman may, "[u]pon its own initiative or upon receipt of a complaint from a complainant, investigate an administrative act that is alleged to be contrary to law or rule, or contrary to policy of the department or child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds." The primary role of the OCO continues to be the investigation and resolution of complaints issued against state and private agencies regarding children in the protective services, foster care and/or adoption services systems.

A total of 698 complaints were received by the OCO between July 1, 1998 and September 30, 1999 involving 1,490 children in 69 of Michigan's 83 counties. These figures are similar to those noted in the 1997-1998 Annual Report when taking into consideration the extended fifteen-month reporting period for the current Annual Report.

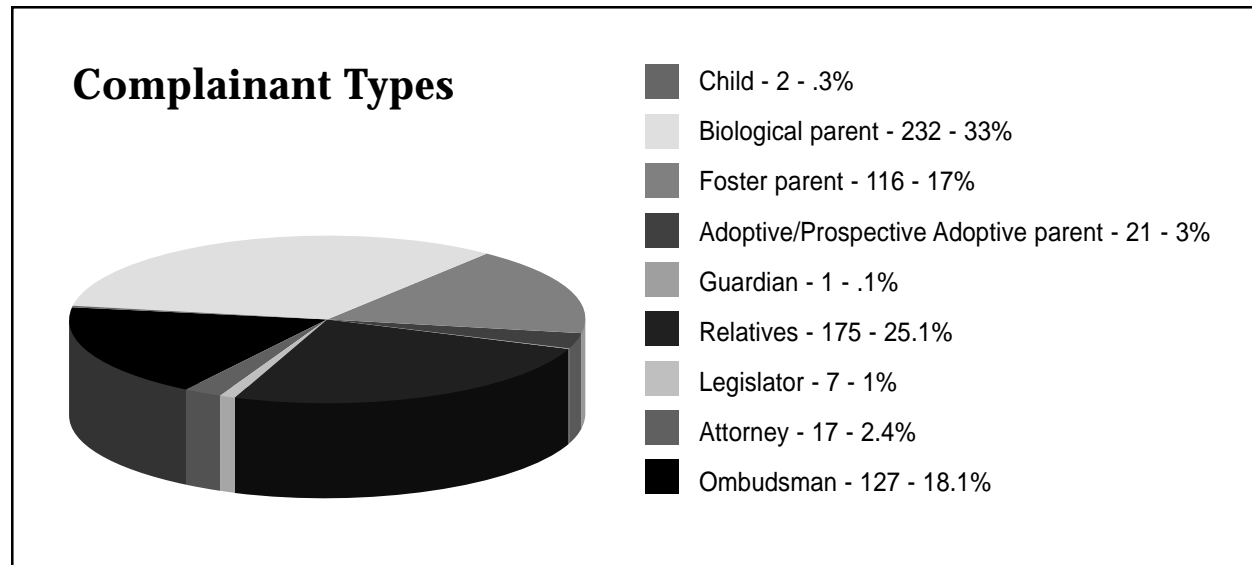
Complaint Activity Levels

Activity Levels for Report 4:	July 1, 1998 - September 30, 1999
Months in Reporting Period:	15
Number of Complaints:	698
Average Number of Complaints per Month:	46.9
Number of Children Served:	1,490
Average Number of Children per Month:	99.4
Average Number of Children per Case:	2.3
Average Age of Children Served:	7.35

Complainant Types

As stated in PA 204, Section 5, all of the following may make a complaint to the OCO: (a) the child, if he or she is able to articulate a complaint; (b) a biological parent of the child; (c) a foster parent of the child; (d) an adoptive parent or a prospective adoptive parent of the child; (e) a legally appointed guardian of the child; (f) a guardian ad litem of the child; (g) an adult who is related to the child within the fifth degree by marriage, blood, or adoption; (h) a Michigan legislator; and, (i) an attorney for any individual listed in sections (a) through (h). Due to the legislature's specificity as to the categories of complainants, the OCO must strictly regard the section 5 list as exhaustive. However, PA 204, Section 6(a) does allow the Ombudsman to open an investigation "upon his[/her] own initiative." The Ombudsman may choose to open a case for investigation if she feels

an investigation is warranted based on information provided at intake even when this information is received from an individual or institution who lacks standing under Section 5, subsections a-i.⁵ An Ombudsman initiated complaint will identify the Ombudsman as the sole complainant.



Intake Process

As previously stated, the intake process has been fine-tuned during the reporting period in order to more fully assist those children and complainants the OCO is statutorily mandated to assist. The majority of complaints issued to the OCO continue to be from telephone calls to the office, although it is not unusual to receive complaints via fax, mail, and/or e-mail. The Intake Investigator responds individually to each complainant in order to obtain detailed information⁶ about his/her complaint and to determine the complainant's goal in contacting the Ombudsman's office. The Intake Investigator also explains the purpose and practices of the office. At the conclusion of the intake process, complaints are presented to the Ombudsman, who then determines if jurisdiction exists and what course of action, if any, should be taken within the legal parameters of PA 204 of 1994. The complaint will fall into one of three categories⁷:

⁵ Individuals who typically issue complaints to the OCO yet are ineligible to serve as official complainants include: mandated reporters of child abuse/neglect as defined by MCL 722.623 ("The Child Protection Act"); judges; referees; prosecutors; and others. Newspaper articles and news reports regarding serious injury to or maltreatment of a child also offer information upon which the Ombudsman may initiate a complaint.

⁶ Detailed information collected at the time of intake includes (but is not limited to): brief biographical data on the complainant for correspondence purposes; the name(s) and birthdate(s) of the child(ren) involved; current living status of the child(ren); FIA and/or private agency information; the nature and detail of the complaint; and, the specific actions requested by the complainant.

⁷ After completing an initial intake, it is sometimes difficult to determine whether a complaint is appropriate for investigation. In such situations, the intake investigator conducts a preliminary investigation. Such an investigation generally consists of collateral contact(s) with additional parties involved in or knowledgeable of the case such as a(n) FIA or agency staff person, foster parents, attorneys/guardian ad litem, prosecutors, relatives, etc. After a preliminary investigation is complete, the Ombudsman determines within which category the complaint falls and responds accordingly.

(a) Inquiry: This type of complaint typically involves a child; however, the child is not currently involved in the CPS, foster care, or adoption services system. Generally, the OCO receives inquiries from people with questions about state-funded programs/services available to children or concerns about a specific child having to do with guardianships, delinquency services, custody actions or related issues. Although this type of inquiry does not fall within the parameters of PA 204, the OCO is committed to providing Michigan's citizens with prompt access to information at its disposal. To this extent, the caller will receive verbal or written referral information directing them to the service, agency or organization appropriate for their situation. **The OCO handled 102 inquiries during the reporting period.**

(b) Referral: This type of complaint pertains to a child involved with CPS, foster care, or adoption services; however, the concern expressed does not pertain to the actions of the FIA or a private agency. The complaint typically focuses on an area of the child welfare system over which the OCO has no jurisdiction — for example, the court system, legal representation, law enforcement, Friend of the Court (FOC), etc. Again, although the OCO may not accept these complaints for investigation, the complainant will receive written or verbal information directing them to the agency, service or organization appropriate for their situation. **The OCO handled 357 referrals during the reporting period.**

(c) Valid Complaint: This type of complaint directly addresses the actions of the FIA and/or a private child placing agency regarding a child involved with CPS, foster care or adoptions services. If the Ombudsman determines that a valid complaint shall be investigated, the OCO sends a letter to the complainant indicating the case has been opened and further restating the complainant's goal in contacting the Ombudsman. However, not every valid complaint is opened for investigation. In an effort to focus and prioritize investigative time and resources, the OCO acknowledges that there are some complaints that, although they meet the basic criteria, are not appropriate for investigation. Examples include:

- The complaint at issue occurred at such a time in the past that an investigation by the OCO would not be productive or serve any purpose for the child(ren) at issue.
- The complaint is one that the OCO has recently addressed with the FIA/private agency or a law or policy was recently enacted to address the issue.
- The complainant has not pursued existing administrative remedies with the FIA/private agency in an attempt to resolve the issue prior to contacting the OCO.
- The complainant is seeking an outcome the OCO has no authority to provide such as rendering adoption decisions, returning a child home, retaining a child in care or disciplining a worker or agency.
- The complainant disagrees with specific actions taken by CPS, foster care or adoption services, however, the information provided suggests that the agency is following law, policy, or rule — basically, the complainant disagrees with the law, policy, or rule.

Valid complaints not opened for investigation result in written notice to the complainant of the decision not to investigate, the reason(s) for that decision, and suggestions for alternative methods by which the complainant might address his/her concern. In an effort to more effectively assist children, the OCO has found that streamlining valid complaints has improved its ability to serve all complainants and children within the OCO's jurisdiction. **The OCO handled 226 valid complaint investigations during the reporting period. The OCO handled 13 complaints which although valid, did not warrant investigation based on one of the five criteria listed above.**

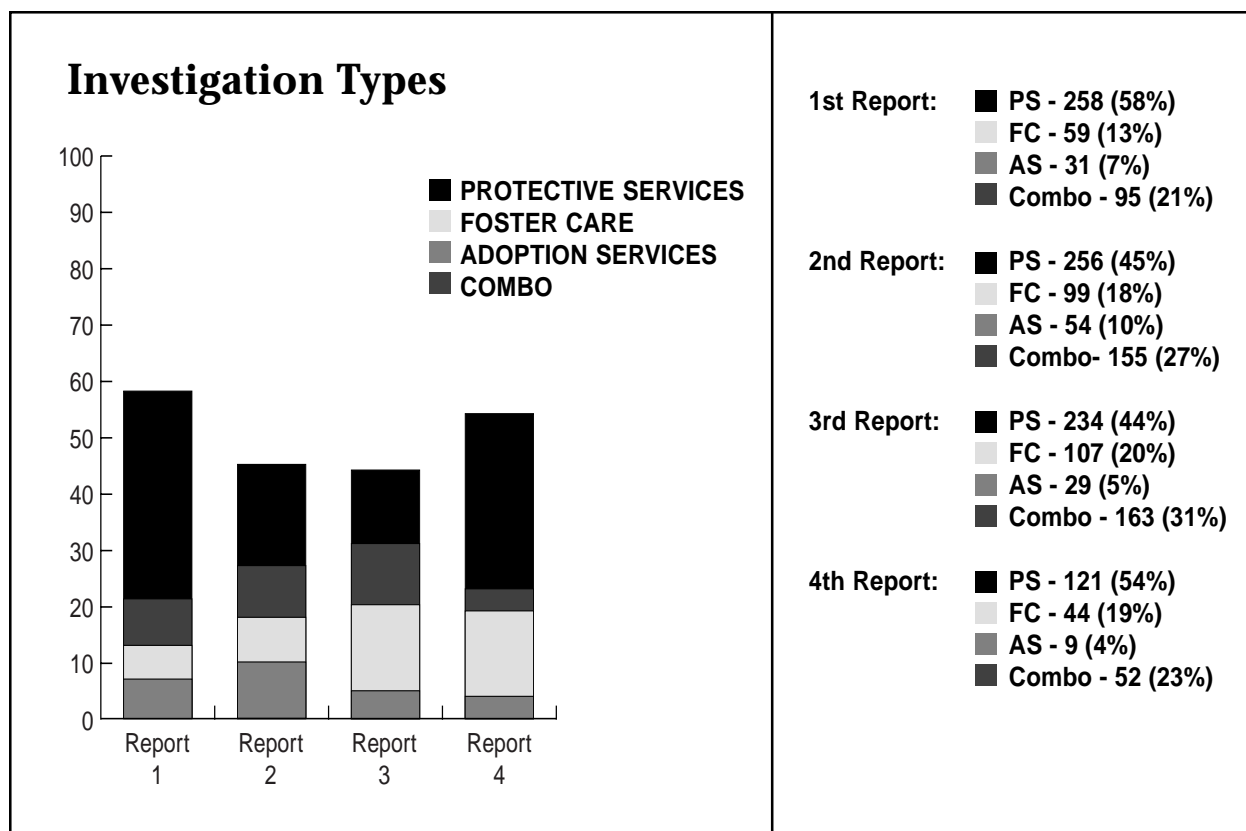
Complaints Received

Breakdown of Complaints Received:	July 1, 1998 - September 30, 1999
Inquiries:	102
Referrals:	357
Investigations:	226
Valid Complaints — Not Opened:	13
Total:	698

Investigation

Valid complaints accepted for investigation are assigned priority status and goals are established in order to focus the investigation on the specific issues the complainant raised during the intake process. Generally, the OCO limits its investigation to the specific issues raised in the intake process. However, there are situations where the OCO independently discovers additional law, policy or rule violations during the course of the investigation that the OCO may choose to include in the scope of the investigation.

Case files are ordered from the FIA and/or private agency, and a thorough investigation is undertaken. In addition to time-intensive file reviews and interviews of interested parties, case investigations may include: case conferences with FIA and/or private agency personnel; court appearances; site visits; and consultations with experts from the fields of medicine, psychology, law, social work, and law enforcement. The OCO investigators also periodically consult with the Ombudsman, Supervising Investigator and team members in order to discuss case progress, development and investigative goals. The Ombudsman continues to actively support and collaborate with the FIA and private agencies on individual cases when an independent review of case materials warrants intervention and such intervention is in the best interest of the child(ren).



Findings

Upon completion of an investigation, one of two actions is typically undertaken⁸: (1) the OCO affirms the actions of the FIA or the private child placing agency; or (2) the OCO issues a Report of Findings and Recommendations (F&Rs). Pursuant to PA 204, Section 10(1): *“The ombudsman shall prepare a report of the findings of an investigation and make recommendations to the department or child placing agency if the ombudsman finds 1 or more of the following:*

- (a) *A matter should be further considered by the department or child placing agency.*
- (b) *An administrative act should be modified or canceled.*
- (c) *Reasons should be given for an administrative act.*
- (d) *Other action should be taken by the department or child placing agency.*

Therefore, F&Rs are written whenever a violation of policy or procedure is found. Following completion of an F&R, a copy is forwarded to the FIA or private agency for their review and comment. The agency’s goal is to respond to the OCO within 45 days. After FIA and/or the private agency responds, the complainant receives the OCO’s recommendations pertaining to the complaint, as well as a description of the actions

⁸ The OCO renders specific recommendations to the FIA and/or the private agency upon completion of a case. However, the OCO may issue recommendations or “Requests for Action” letters during an ongoing investigation to ensure a child’s immediate safety. The OCO issues “Requests for Action” letters to the FIA and/or private agency in letter form outlining the facts of the case and the areas of concern regarding the agencies’ handling. Based upon the facts, the OCO recommends further action be taken by the FIA and/or the private agency with the ultimate goal being the safety and permanency of the child(ren) at issue.

taken by the FIA or the private agency to correct the problem(s). However, all confidential information is removed from the complainant's correspondence.

During the reporting period, the OCO affirmed the FIA and/or private agencies in 202 cases and issued 86 Reports of Findings and Recommendations.⁹ Within the 86 F&Rs submitted, 420 specific findings were documented. A general breakdown of the type of findings issued follows:

Findings and Recommendations Summary

Categories of Findings:	July 1, 1998 - September 30, 1999
Noncompliance with Policy or Law:	274
Current Law or Policy Inadequate:	28
Poor Practice/Decisions:	112
Systems Problems¹⁰:	6
Total Findings:	420

Case Closure

Case closure may occur for a variety of reasons. As stated above, the OCO may affirm the FIA or private agency's actions or disaffirm the FIA and/or private agency via an F&R. However, a case may also be closed when:

- A court of jurisdiction renders a decision.
- The complainant fails to provide information necessary to proceed with an investigation.
- Due to a material alteration in case factors, the best interest of the child is served by closing the case — for example, a custody change or related criminal proceeding.
- After initial investigation or upon obtaining additional case information, the OCO determines that the Ombudsman does not have jurisdiction over the case and a referral is made to a more appropriate agency.

Upon closing a case, the OCO sends a closing letter to the complainant¹¹ detailing the reason(s) for closure and including recommendations made to the agenc(ies) involved as well as the response provided by the FIA and/or the private agenc(ies) when applicable.

⁹ The number of affirmations and F&Rs reflects cases that may have been open prior to the reporting period; however, a final report was not submitted until the 1998-1999 reporting period.

¹⁰ An example of systems problems reported in the F&Rs would be the lack of legal representation at trial.

¹¹ Due to strict confidentiality constraints, the OCO does not send a closing letter to original (but non-statutory) complainants in OCO initiated complaints.

Recommendations

Pursuant to PA 204 of 1994, Section 10(5), *“The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the conduct of the ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies.”* Recommendations arise from complaints issued to the OCO and refer specifically to cases involving CPS, foster care, adoption services or a combination of the three categories. There are a total of 12 recommendations for system reform grouped into 4 categories: **Children’s Protective Services, Foster Care, System Issues, and Proposed Legislative Amendments.**

Children’s Protective Services

1. a) The OCO recommends that the FIA clarify existing policy to ensure that the risk of harm to a new child is accurately assessed in situations where a parent has had rights terminated to a previous child. Policy should require a thorough review of the parent’s prior CPS and foster care history that resulted in termination. In cases where there is insufficient evidence to support that the parent has rectified the conditions that lead to the prior termination, the OCO recommends that CPS determine there is risk of harm to the new child.

b) The OCO recommends the FIA delete the word “current” from Policy Item 712, page 116 (effective date 7-1-99). The deletion of the word “current” would ensure that policy is consistent with the wording and intent of the Child Protection Law which reads, “The Department determines that there is risk of harm to the child and...”

Rationale: Current FIA policy requires either a preliminary or full investigation in these situations. It is necessary to review the parent’s past history relative to why their parental rights to other children were terminated and document how these conditions have been rectified so that the newborn is not at risk. Existing practice regarding the investigation of referrals of a new child born to a parent with a prior termination appears to focus solely or primarily on the immediate circumstances without giving due weight to the parent’s history of abuse/neglect. This practice appears to be strongly influenced by the use of the word “current” in policy which may imply that an unresolved history of abuse/neglect is not relevant to an assessment of risk to the new child. However, it is imperative that prior to reaching disposition, a CPS investigation of a new child include a thorough review of the parent’s history of abuse/neglect. Without sufficient evidence demonstrating that the prior conditions have been rectified, there should be a presumption that the new child is at risk.

Foster Care

2. a) The OCO recommends that a list of all requirements necessary for an unlicensed relative home study, undertaken when a child is ordered into out-of-home care, be specifically detailed in the FIA Foster Care policy manual. (Current FIA Foster Care Policy refers the worker to the foster home development policy manual to obtain home study requirements.) Additionally, policy shall explicitly state that a home study must be documented in a separate home study report.

b) FIA policy should be clarified to state that even if CPS places a child with a relative at the time of initial removal on a tentative or emergency basis, that placement is temporary, pending approval of a completed relative home study. In order for the child to remain in the relative placement, the foster care worker shall thoroughly document how the placement is appropriate and meets the child's individual needs.

Rationale: a) Consistent with federal and state legislative intent, the OCO believes that suitable kinship placements should be pursued wherever possible. However, there must be clear standards for determining that a kinship home is safe for a child. While FIA policy governing kinship placements has become more comprehensive in recent years, the OCO finds further clarification is needed to specifically guide workers through the process of selecting and approving a kinship placement. In addition, the policy definition of a home study should clarify that a written report should thoroughly document this selection and approval process.

b) Policy should clarify that kinship status is only one of the 10 distinct placement selection criteria that must be evaluated in selecting a placement for a child. The existence of an available kinship home in and of itself does not mandate placement with a relative. There may be other overriding placement selection criteria indicating that a placement other than with the relative may be in the child's best interest and better suited to meet the child's overall needs. Although CPS may find a kinship home suitable as an emergency placement, foster care is still required to complete a thorough and comprehensive home study and make the placement decision based on the total sum of the placement selection criteria.

3. The OCO recommends that the FIA amend the Medical Passport (FIA Form 221) to ensure consistent documentation of all items required by FIA policy.¹² Specifically, on the most current medical passport template (dated 3/98), a category does not exist for documenting a child's ongoing medications. Furthermore, the OCO suggests two other additions to the Medical Passport: a) inclusion of a child's primary health care provider(s), and b) ensuring that the medical passport is completed, placed in the case file, and provided to foster parents and/or relative care providers.

Rationale: A child placed in foster care often has health care needs and corresponding regularly prescribed medication. Consider a child who takes Ritalin for ADHD (Attention Deficit Hyperactivity Disorder), Prozac for depression or Proventil for asthma. Disruption of his/her medication schedule during the transition into and stay in foster care can have significant implications for the child's behavior and well-being. Listing a child's current, regular and periodic medications on the medical passport at the outset of the case would help to ensure continuity in a child's health care.

a) Of equal importance is identification and documentation of a child's primary health care provider. Current FIA policy acknowledges the importance of 'continuity of care,' while stipulating that due to geographic or other practical reasons, a child may receive medical attention from a different provider. The OCO acknowledges that continuity of care may be interrupted during a child's foster care stay; however, the

¹² FIA Policy Item 722.6, page 12 (effective date 7-1-99).

child's medical passport should, at a minimum, contain the name of the child's originating health care provider(s). Identifying this information at the outset of a child's case, will not only facilitate the foster parents' knowledge of the child's medical situation, but will also allow for professional contact between the new and previous health care provider(s).

b) Although foster care workers are required to advise foster parents of a child's medication(s), the OCO has reviewed cases in which this has not been done in a timely or thorough manner. Providing the foster parents with the medical passport, which includes up-to-date medications and lists current health-care providers, at the time of placement or soon thereafter, would provide important continuity.

4. The OCO recommends that the FIA review caseworker practice and agency training regarding the inclusion of foster parents in a child's team and the importance of foster parent participation in case planning.

Rationale: Current philosophy, as demonstrated by numerous law and policy changes, reflects that foster parents are an integral part of a child's team. In order for foster parent participation in the team to be useful and productive, foster parents require information and resources to assist in the care of foster children in their home. In addition, an open and forthright relationship with the child's caseworker and agency is invaluable.

The OCO acknowledges that the philosophy regarding the role of foster parents in a child's case has changed dramatically in recent years. While foster parents may not always have been viewed as team members in the past, this has changed to reflect the importance of the foster parents' role and the valuable contributions foster parents can make in assisting with case planning. However, a number of complaints filed with the OCO indicate that caseworker and agency practice has not kept pace with philosophy. The concerns brought to the OCO's attention highlight the importance of complying with laws and policies pertaining to this issue, including:

- providing the foster parents with all available information about the child at the time of placement;
- informing foster parents of their right to access ongoing case information;
- including the foster parents' input in a child's service plan;
- providing the foster parents with the information necessary to contact the child's lawyer/guardian ad litem;
- providing foster parents with information about, and encouraging their attendance at, court hearings;
- developing gradual reunification plans that allow the foster parents, birth parents, and the children time to adapt to the child's new living situation and to decrease the trauma of an abrupt move; and,
- informing foster parents of their right to appeal a decision to remove a foster child from their home.

System Issues

5. The OCO recommends the FIA conduct an assessment of CPS and foster care worker caseloads and supervisor to worker ratios in each county office in order to: collect accurate statistical data regarding the size of worker caseloads, and ensure staff's ability to meet current policy and legal requirements. Such caseload assessments should be conducted annually.

Rationale: During the reporting period, OCO investigators found repeated instances of noncompliance with law and policy by CPS and foster care workers. The OCO reviewed CPS investigations where CPS workers did not adhere to policy guidelines governing time frames for commencement of investigation and face-to-face contacts. Reasons given on investigation summaries for not meeting time frames included some variation of: "caseloads too high," or "other emergent matters," etc. Additionally, the OCO found significant lapses in time between CPS workers' completion of investigation reports and the supervisor's signature on those reports, an indication that some supervisors are unable to provide effective and meaningful oversight and/or support to the worker.

6. The OCO recommends the FIA enhance the current capabilities of the Central Registry and implement changes allowing complete record keeping and overall ease of use. For example, when an individual is substantiated for separate offenses during an open CPS case, the Registry should be able to list each subsequent offense, the date the offense occurred, and the name(s) of the victim(s).

Rationale: The OCO agrees with the overall concept of the Central Registry as a tool to assist FIA workers in identifying individuals as perpetrators of abuse and/or neglect. However, the current system is in need of changes to enhance its overall effectiveness. Without such capabilities, the Central Registry is ineffective in alerting recipients of Registry information of an individual's fitness regarding the care of children.

Proposed Legislative Amendments

7. The OCO recommends a statutory amendment to the definition of "nonparent adult" found in MCL 722.622(2)(n)(iii). Currently, MCL 722.622(2) identifies individuals who may be held responsible for abusing and/or neglecting a child. The "nonparent adult" category allows the state to hold individuals who have substantial and regular contact with the child, and a close relationship with a person responsible for the child's health or welfare, but are not legally responsible for the child liable for harming that child. The OCO recommends amending subsection (iii) to simply read, "Is not the child's parent." By striking the phrase, "or a person otherwise related to the child by blood or affinity to the third degree," the law would allow the state to hold relatives, who do not reside in the child's home, but who do have a close, personal relationship with the child, responsible under the definition of "nonparent adult" if they harm the child. At the present time, CPS is unable to substantiate and list such an individual as a perpetrator on the Central Registry.

Rationale: The OCO has found that MCL 722.622(2)(n)(iii) unduly limits the state's ability to hold relatives, who reside outside the child's home yet maintain a relationship with the child, responsible if they perpetrate abuse or neglect against the child. A good example of this issue is a child of divorce, who while visiting a parent is molested by a

relative whom the child sees on a regular basis. If this relative resides outside the parent's home, CPS is unable to substantiate the relative for sexual abuse since he/she is currently excluded from the definition of "nonparent adult" due to the wording in subsection (iii).

Currently, the sole remedy in this case scenario is the pursuit of criminal sanctions against the relative, a remedy that is often unsuccessful and ineffective in protecting the child and assisting the family. This solution poses further problems if criminal prosecution is unsuccessful and the child's parent refuses to acknowledge the abuse took place.

8. The OCO recommends a statutory amendment to the CPL requiring the FIA to provide information to the Family Court with jurisdiction over a custody/visitation or guardianship case when CPS finds a preponderance of evidence that a child has been abused or neglected, and:

a) The FIA is aware that the child is the subject of court ordered custody/visitation or a legal guardianship, and/or

b) The FIA is aware that the adult perpetrator is a party to a court ordered custody/visitation action or is a court appointed legal guardian of a child.

Rationale: The OCO believes it is critical that family court judges and referees, who are making decisions about children and who they live with/visit, have current protective services information to aid in that decision-making process. The OCO finds that information indicating that a child has been abused or neglected or that a parent or guardian has abused or neglected a child is crucial to this decision-making process. While the OCO believes that this information is often made available to courts making custody/visitation and guardianship decisions, there is no safeguard to ensure that coordination between FIA and the court occurs.

9. The OCO recommends a statutory change to the Child Protection Law (CPL)¹³ requiring CPS to disclose certain Central Registry information to parents. Specifically, the CPL should be amended to direct the FIA to release Central Registry information to a parent or a person legally responsible for a child if the FIA becomes aware that an individual with a substantiated history of child abuse or neglect has moved into a home where children reside. The CPS "Notice of Action and Rights" due process letter sent to substantiated perpetrators placed on the Central Registry should inform the perpetrator of this new policy. The OCO also recognizes a perpetrator's right, as part of due process, to file a request for expunction. Therefore, if a perpetrator has filed a request for expunction according to the process outlined in the due process notification letter, the FIA shall not release the Central Registry information until the request for expunction process has been completed.

Rationale: A change in the CPL is needed to better protect children when a person, who has been previously substantiated for child abuse and/or neglect, moves in with a new family. Current policy exemplifies the FIA's position that a person previously convicted of

¹³ The Child Protection Law (Public Act 238 of 1975, MCLA 722.622, *et seq.*, as amended) — specifically, MCLA 722.627, MCLA 722.627d, and MCLA 722.627d(2)(a).

child physical abuse and/or neglect potentially poses a threat to the safety of children and CPS' disclosure of that person's substantiated history is in the best interest of children. If implemented, FIA would be required to release Central Registry information according to the same FIA policy governing release of criminal histories.¹⁴

Information regarding a person's previous substantiation for child abuse and/or neglect is as important to a parent as information regarding previous criminal convictions when it comes to protecting their child. The legal authority granted to the FIA permitting them to release criminal conviction information should also be afforded to CPS regarding abuse and neglect substantiations via the CPL. FIA policy should reflect this change in the CPL by requiring the FIA to discuss with the parent his/her responsibility to protect his/her child(ren) and the specifics about how this could be accomplished.

10. The OCO recommends a statutory provision be enacted to require that at CPS and foster care hearings the FIA or its contract agency be represented by an attorney.

Rationale: The FIA and private agency caseworkers continue to routinely appear in court unrepresented. Without formal representation, caseworkers are forced to represent themselves (and thus the state) against both the parents' and/or children's attorneys. The atmosphere of a courtroom is inherently adversarial, yet caseworkers are unable to: offer opening or closing arguments, call or cross-examine witnesses, object to improper testimony or questioning, admit evidence, etc. Caseworkers are not trained to argue legal rhetoric, nor should this be their role.

11. The OCO recommends that recent legislation be amended to address the Foster Care Review Board's (FCRB) ability to hear appeals from foster parents/kinship caregivers for all children in foster care including Michigan Children's Institute (MCI) wards. Disagreements between the FIA and the FCRB regarding MCI wards should be resolved by the MCI Superintendent. Under recently enacted Binsfeld legislation, foster parents may appeal to the FCRB to prevent a child from being removed from their home with some exceptions. However, current FIA policy,¹⁵ states that the foster parent/kinship caregiver does not have the option of appeal to the FCRB if the child(ren) at issue is a state ward under the MCI. The legislature did not intend to exclude MCI state wards from the appeals process, yet the "letter of the law" allows for this exception.

Rationale: In developing an appeals process through the Binsfeld legislation, the legislature clearly intended to ensure that children are not removed from foster care/kinship care placement arbitrarily or without just cause. However, it has been argued that the legislation, as written, does not specifically include MCI wards. While the OCO acknowledges that current wording of the statute may allow such an exception, the OCO also believes that excluding all MCI wards from this appeals process countermands the legislative intent of the Binsfeld legislation.

¹⁴ FIA Policy Item 713, pages 7-8 (effective 7/14/98).

¹⁵ FIA Policy Item 722.3, pages 18-19 (effective 7-1-99).

12. The OCO recommends a statutory amendment to Section 136b(1)(b) of the Michigan Penal Code to expand the definition of the term “omission” to include identical language as found in Section 2(f)(ii) of the Child Protection Law. Specifically, the OCO recommends the following amended language:

“omission” means a willful failure to provide the food, clothing, or shelter necessary for a child’s welfare or the willful abandonment of a child, OR PLACING A CHILD AT AN UNREASONABLE RISK TO THE CHILD’S HEALTH OR WELFARE BY FAILURE OF THE PARENT, LEGAL GUARDIAN, OR ANY OTHER PERSON RESPONSIBLE FOR THE CHILD’S HEALTH OR WELFARE TO INTERVENE TO ELIMINATE THAT RISK WHEN THAT PERSON IS ABLE TO DO SO AND HAS, OR SHOULD HAVE, KNOWLEDGE OF THE RISK.

Rationale: The Michigan Penal Code does not adequately allow parents, or persons responsible for a child to be criminally charged with child abuse and/or neglect in situations where the parent, or person responsible for the child is aware that the child is being abused or neglected and does nothing to stop it. For example, a case recently came to light in which a mother and her two children resided with the mother’s live-together-partner (LTP) for several years. The children disclosed being consistently and severely abused by the LTP over a long period of time. Prosecutors were able to charge the LTP with first and third-degree child abuse; they were also able to determine that the mother was aware of the ongoing abuse of her children. Despite the mother’s knowledge and her failure to intervene, prosecutors were unable to charge her with a crime under the current law.

Appendix A

Acknowledgments

The OCO would like to thank Governor John Engler for the opportunity to improve the child welfare system, which, in turn, allows us to positively impact the lives of Michigan's children. The OCO appreciates the cooperation and efforts of FIA Director Douglas Howard and his staff as well as all private child placing agencies throughout the state. The OCO also wishes to thank Michigan's State Senators and State Representatives, and their respective staffs, for their continued interest and commitment to our office.

The OCO is grateful to many individuals for their contributions of assistance and support. Special thanks to:

FIA and private agency line workers for their professional and caring efforts
Tom Quasarano, Assistant Attorney General
Katrina Iamarino for her assistance in compiling information and editing this Report.

As with any fully functioning office, acknowledgment must also be given to the professional and indispensable efforts of our support staff. The OCO currently employs two full-time equivalents (FTEs) both of whom provide administrative and technological support.

It is impossible to acknowledge everyone who played a significant role in the continuing efforts of the OCO. We are grateful to the many professionals who have been available and receptive to consultation and providing expert advice. Finally, we owe a great debt to the children we serve. As James Baldwin said, *"For these are all our children... We will all profit by, or pay for whatever they become."*

Appendix B

Administrative Response to Annual Report Recommendations: 1997-1998

The following chart provides an update on the progress the FIA has made regarding the five recommendations the OCO submitted in the 1997-1998 Annual Report.¹⁶

RECOMMENDATION	PROGRESS
<p>1 The Ombudsman recommends that when a caseworker becomes aware that services being provided are not appropriate for the purpose(s) intended, the CPS caseworker shall provide other services tailored to meet the needs of the parent and/or child.</p>	<p>1 Agree. Although current FIA policy addresses this issue, FIA will clarify and strengthen the policy to assure that where services are not meeting the needs of the family, the worker shall provide more appropriate services if available and accessible.</p>
<p>2 The Ombudsman recommends that when a referral is submitted by a mandated reporter concerning a child aged 5 years or younger, the case shall be assigned for investigation.</p>	<p>2 Disagree. CPS should address the facts of every complaint, regardless of the source, to determine if, pursuant to the law, it is appropriate for investigation.</p>
<p>3 The Ombudsman recommends that FIA clarify the term “harm” as it is used to define the effects a child might experience as a result of exposure to long-term domestic violence (DV).</p>	<p>3 Disagree. In April 1998, FIA policy was enhanced to include guidelines on handling DV issues. These guidelines include decision points for identifying DV issues, and how those issues should be incorporated into investigations and determination decisions. As with other issues addressed by CPS, DV issues must be reviewed on a case-by-case basis using the standards set in the CPL.</p>
<p>4 The Ombudsman recommends that psychological evaluations be authorized at the onset of each CPS/foster care case in which the caseworker has concerns about the parent’s seemingly significant intellectual limitations and/or psychological impairments. These factors influence a parent’s insight and ability to benefit from services and a service plan should be tailored accordingly.</p>	<p>4 Agree. CPS is currently required to assess the needs of the family as soon as an investigation is initiated. FIA will enhance policy to assure that psychological evaluations are performed as early as possible in cases when deemed appropriate.</p>
<p>5 The Ombudsman recommends that Parent Agency Agreements (PAAs) include measurable behaviors that reflect parenting skills commensurate with a child’s protection and best interests.</p>	<p>5 Agree. The FIA Foster Care Manual will be revised February 1, 2000 to assure that behaviorally-specific, developmentally appropriate changes in parenting are documented in the PAA Treatment Plan and Services Agreement.</p>

¹⁶ Administrative responses to OCO Annual Report recommendations from the first three Annual Reports may be accessed via the OCO website: <http://www.state.mi.us/dmb/ombudsman>.

Appendix C

Multi-Disciplinary Team Training

(July 1, 1998 - September 30, 1999)

- 7th National Colloquium — American Professional Society on the Abuse of Children (APSAC), San Antonio, Texas
- 1999 National Conference on the Investigation and Prosecution of Child Abuse — American Prosecutors Research Institute (APRI), Tucson, Arizona
- Advanced Forensic Interview Training, Traverse City
- Annual Conference for Prevention of Child and Youth Violence — Allegan County Intermediate School District/Family Division of 48th Circuit Court, Holland
- Annual Law and Society Association Conference, Chicago, Illinois
- Bi-Annual Child Maltreatment Conference — Spectrum Health, Grand Rapids
- Child Abuse and Neglect — MSP Violent Crimes Unit
- Child Welfare League of America Conference, Kansas City, Missouri
- Coaching and Team Building Skills — Career Track
- Conference on Children and the Law — American Bar Association (ABA), Washington, D.C.
- Criminal Investigative Resources — MSP
- Excelling As a First Time Manager and Supervisor — Career Track
- Expert Witness — State of Michigan Training
- Fifth Annual Medical Conference on Child Abuse and Neglect — Medical Advisory Committee and FIA in cooperation with Henry Ford Health Systems
- Information Systems to Measure and Improve Services to Children — Child Welfare League of America, Cape Cod, Massachusetts
- Licensing of Foster Care Homes and Private Agencies — Consumer and Industry Services (CIS)
- Michigan Model Children's Forensic Interviewing Protocol — Prosecuting Attorneys Association of Michigan (PAAM)
- Mid-Michigan Child Law Conference
- National Certified Investigator — Inspector Training Basic Council on Licensure, Enforcement, and Regulation, East Kentucky University
- Personal Safety Training — Michigan Association of Children's Alliance (MACA)
- Serial Sexual Predators — Michigan Justice Training/MSP, MSU
- Substance Abuse — Child Welfare Institute, Office of Professional Development Training Center
- Termination of Parental Rights Seminar — PAAM, Lansing
- Trauma, Violence, Grief — Ele's Place
- United States Ombudsman Association Annual Conference

Appendix D

OCO Complainants by County

(July 1, 1998 - September 30, 1999)

COUNTY=■		NUMBER OF COMPLAINTS RECEIVED=●	
■	●	■	●
Alcona	2	Leelanau	0
Alger	0	Lenawee	6
Allegan	5	Livingston	8
Alpena	1	Luce	0
Antrim	1	Mackinac	3
Arenac	2	Macomb	20
Baraga	0	Manistee	3
Barry	1	Marquette	2
Bay	10	Mason	0
Benzie	0	Mecosta	10
Berrien	7	Menominee	2
Branch	3	Midland	4
Calhoun	20	Missaukee	3
Cass	3	Monroe	7
Charlevoix	2	Montcalm	6
Cheboygan	2	Montmorency	1
Chippewa	2	Muskegon	12
Clare	3	Newaygo	5
Clinton	3	Oakland	45
Crawford	0	Oceana	4
Delta	1	Ogemaw	5
Dickinson	0	Ontonagan	0
Eaton	9	Osceola	3
Emmet	4	Oscoda	0
Genesee	29	Otsego	1
Gladwin	0	Ottawa	8
Gogebic	0	Presque Isle	0
Grand Traverse	9	Roscommon	3
Gratiot	2	Saginaw	18
Hillsdale	2	St. Clare	5
Houghton	1	St. Joseph	3
Huron	1	Sanilac	1
Ingham	88	Schoolcraft	1
Ionia	5	Shiawassee	4
Iosco	3	Tuscola	8
Iron	1	Van Buren	8
Isabella	4	Washtenaw	8
Jackson	11	Wayne	83
Kalamazoo	9	Wexford	7
Kalkaska	3	Out-of-State	
Kent	19	Inquiries/Referrals	9
Keweenaw	0	Unclassified ¹⁷	105
Lake	3		
Lapeer	6	Total	698

¹⁷ The "Unclassified" category of complaints constitutes miscellaneous brief inquiries made in which county information was not provided by the complainant or unknown.

Appendix E

OCO Investigations by County (July 1, 1998 - September 30, 1999)

COUNTY=■ NUMBER OF COMPLAINTS RECEIVED=●			
■	●	■	●
Alcona	1	Lake	2
Alger	0	Lapeer	2
Allegan	2	Leelanau	1
Alpena	0	Lenawee	0
Antrim	0	Livingston	4
Arenac	1	Luce	0
Baraga	2	Mackinac	1
Barry	0	Macomb	16
Bay	6	Manistee	2
Benzie	0	Marquette	2
Berrien	2	Mason	0
Branch	1	Mecosta	1
Calhoun	6	Menominee	0
Cass	1	Midland	1
Charlevoix	0	Missaukee	0
Cheboygan	0	Monroe	1
Chippewa	0	Montcalm	8
Clare	4	Montmorency	0
Clinton	0	Muskegon	2
Crawford	0	Newaygo	2
Delta	1	Oakland	15
Dickinson	0	Oceana	0
Eaton	3	Ogemaw	0
Emmet	1	Ontonagan	0
Genesee	20	Osceola	2
Gladwin	1	Oscoda	0
Gogebic	0	Otsego	1
Grand Traverse	1	Ottawa	3
Gratiot	0	Presque Isle	0
Hillsdale	1	Roscommon	1
Houghton	0	Saginaw	10
Huron	0	St. Clare	2
Ingham	17	St. Joseph	2
Ionia	1	Sanilac	1
Iosco	1	Schoolcraft	0
Iron	0	Shiawassee	1
Isabella	4	Tuscola	2
Jackson	7	Van Buren	3
Kalamazoo	6	Washtenaw	3
Kalkaska	2	Wayne	56
Kent	16	Wexford	4
Keweenaw	0		
		Total	252¹⁸

¹⁸ This total number is slightly higher than the total number of OCO cases investigated (226) because several cases involved multiple counties.

Appendix F

PA 204 of 1994

Act No. 204
Public Acts of 1994
Approved by the Governor
June 20, 1994
Filed with the Secretary of State
June 21, 1994

STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994

Introduced by Senators Welborn, Dingell, Geake, Cisky, Dillingham, Gougeon, McManus, Wartner, Bouchard, DeGrow, Pridnia, Honigman, Gast, Hoffman, Arthurhultz, and Hart

ENROLLED SENATE BILL No. 723

AN ACT to create a children's ombudsman; to prescribe the powers and duties of the children's ombudsman, certain state departments and officers, and certain county and private agencies serving children; and to provide remedies from certain administrative acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as "the children's ombudsman act."

Sec. 2. As used in this act:

(a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department of social services, an adoption attorney, or a child placing agency with respect to a particular child related to adoption, foster care, or protective services.

(b) "Adoption attorney" means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

(c) "Adoption code" means chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws.

(d) "Child placing agency" means an organization licensed or approved by the department of social services under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, to receive children for placement in private family homes for foster care or adoption and to provide services related to adoption.

(e) "Child" means an individual under the age of 18.

(f) "Complainant" means an individual who makes a complaint as provided in section 5.

(g) "Department" means the department of social services.

(h) "Foster parent" means an individual licensed by the department of social services under Act No. 116 of the Public Acts of 1973 to provide foster care to children.

(i) "Official" means an official or employee of the department or a child placing agency.

(j) "Ombudsman" means the children's ombudsman created in section 3.

Sec. 3. (1) As a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of

children in foster care and adoptive homes, the children's ombudsman is created as an autonomous entity in the department of management and budget. The ombudsman shall exercise its powers and duties, including the functions of budgeting and procurement and other management-related functions, independently of the director of the department of management and budget.

(2) The ombudsman shall be appointed by the Governor and shall serve at the pleasure of the Governor.

Sec. 4. (1) The ombudsman shall establish procedures for budgeting, expending funds, and employing personnel. Subject to annual appropriations, the ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this act.

(2) The ombudsman shall establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings, and reporting findings resulting from investigations.

Sec. 5. All of the following individuals may make a complaint to the ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds:

- (a) The child, if he or she is able to articulate a complaint.
- (b) A biological parent of the child.
- (c) A foster parent of the child.
- (d) An adoptive parent or a prospective adoptive parent of the child.
- (e) A legally appointed guardian of the child.
- (f) A guardian ad litem of the child.
- (g) An adult who is related to the child within the fifth degree by marriage, blood, or adoption, as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.
- (h) A Michigan Legislator.
- (i) An attorney for any individual described in subparagraphs (a) to (g).

Sec. 6. The ombudsman may do all of the following:

(a) Upon its own initiative or upon receipt of a complaint from a complainant, investigate an administrative act that is alleged to be contrary to law or rule, or contrary to policy of the department or a child placing agency, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds.

(b) Decide, in its discretion, whether to investigate a complaint.

(c) Upon its own initiative or upon receipt of a complaint from a complainant, conduct a preliminary investigation to determine whether an adoption attorney may have committed an administrative act that is alleged to be contrary to law, rule, or the Michigan rules of professional conduct adopted by the Michigan supreme court.

(d) Hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentary or other evidence that the ombudsman considers relevant to a matter under investigation.

(e) Make recommendations to the Governor and the legislature concerning the need for protective services, adoption, or foster care legislation.

Sec. 7. (1) Upon rendering a decision to investigate a complaint from a complainant, the ombudsman shall notify the complainant of the decision to investigate and shall notify the department, adoption attorney, or child placing agency of the intention to investigate. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the department, adoption attorney, or child placing agency of the decision and of the reasons for the ombudsman's action.

(2) If the preliminary investigation described in section 6 leads the ombudsman to believe that the matter may involve misconduct by an adoption attorney, the ombudsman shall immediately refer the complaint to the attorney grievance commission of the state bar of Michigan.

(3) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the ombudsman. Subsequent to the administrative processing of a complaint, the ombudsman may conduct further investigations of any complaint upon the request of the complainant or upon the ombudsman's own initiative.

(4) If the ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the ombudsman shall immediately report that fact to the county prosecutor or the attorney general. If the complaint is against a child placing agency, the ombudsman shall refer the matter to the department of social services for further action with respect to licensing.

(5) The ombudsman may file a petition on behalf of a child requesting the court to take jurisdiction under section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, or a petition for termination of parental rights under section 19b of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.19b of the Michigan Compiled Laws, if the ombudsman is satisfied that the complainant has contacted the department, the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any, and that none of these persons intend to file a petition as described in this subsection.

Sec. 8 (1) The department and a child placing agency shall do all of the following:

(a) Upon the ombudsman's request, grant the ombudsman or its designee access to all relevant information, records, and documents in the possession of the department or child placing agency that the ombudsman considers necessary in an investigation.

(b) Assist the ombudsman to obtain the necessary releases of those documents that are specifically restricted.

(c) Provide the ombudsman upon request with progress reports concerning the administrative processing of a complaint.

(2) The department, an adoption attorney, and a child placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this act.

Sec. 9. The ombudsman shall treat all matters under investigation, including the identities of recipients or individuals from whom information is acquired, as confidential, except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. A record of the office of the ombudsman is confidential, shall be used only for purposes set forth in this act, and is not subject to court subpoena. A record of the office of the ombudsman is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 10. (1) The ombudsman shall prepare a report of the findings of an investigation and make recommendations to the department or child placing agency if the ombudsman finds 1 or more of the following:

(a) A matter should be further considered by the department or child placing agency.

(b) An administrative act should be modified or canceled.

(c) Reasons should be given for an administrative act.

(d) Other action should be taken by the department or child placing agency.

(2) Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the department, or a child placing agency, the ombudsman shall consult with that individual, the department, or the child placing agency. When publishing an opinion adverse to the department or child placing agency, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by the department or child placing agency in defense or mitigation of the action. The ombudsman may request to be notified by the department or child placing agency, within a specified time, of any action taken on any recommendation presented.

(3) The ombudsman shall notify the complainant of the actions taken by the ombudsman and by the department or child placing agency.

(4) The ombudsman shall provide the complainant with a copy of its recommendations on a complaint.

(5) The ombudsman shall submit to the governor, the director of the department, and the legislature an annual report on the conduct of the ombudsman, including any recommendations regarding the need for legislation or for change in rules or policies.

Sec. 11. (1) An official, the department, or a child placing agency shall not penalize any person for filing a complaint or cooperating with the ombudsman in investigating a complaint.

(2) An individual, the department, an adoption attorney, or a child placing agency shall not hinder the lawful actions of the ombudsman or employees of the ombudsman.

Sec. 12. The authority granted the ombudsman under this act is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

Sec. 13. The ombudsman shall maintain a registry of adoption attorneys who provide services described in the adoption code. The ombudsman shall remove an adoption attorney from the registry under any of the following circumstances:

- (a) The attorney requests that his or her name be removed from the registry.
- (b) The attorney fails to register as provided in section 5 of the foster care and adoption services act.
- (c) The ombudsman receives notice that the attorney's license to practice law is suspended or revoked.

Sec. 14. This act shall take effect January 1, 1995.

Sec. 15. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 299.
- (b) Senate Bill No. 721.
- (c) Senate Bill No. 722.
- (d) Senate Bill No. 724.
- (e) Senate Bill No. 725.
- (f) House Bill No. 4201.
- (g) House Bill No. 4428.
- (h) House Bill No. 4614.
- (i) House Bill No. 4638.

This act is ordered to take immediate effect.

Appendix G

GLOSSARY OF ACRONYMS	
AS	Adoption Services
FC	Foster Care
FY	Fiscal Year
PA	Public Act
ABA	American Bar Association
CIS	Consumer and Industry Services
CPL	Child Protection Law
CPS	Children's Protective Services
EDS	Electronic Data Systems
F&R	Report of Findings and Recommendations
FIA	Family Independence Agency, formerly the Department of Social Services
FOC	Friend of the Court
FTE	Full-Time Equivalents
LTP	Live-Together-Partner
MCI	Michigan Children's Institute
MOU	Memorandum of Understanding
MSP	Michigan State Police
MSU	Michigan State University
OCO	Office of Children's Ombudsman
ADHD	Attention Deficit Hyperactivity Disorder
APRI	American Prosecutors Research Institute
FCRB	Foster Care Review Board
ITSD	Information Technology Services Division
MACA	Michigan Association of Children's Alliances
PAAM	Prosecuting Attorneys Association of Michigan
APSAC	American Professional Society on the Abuse of Children

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